

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. Health and Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871 require persons who work or are present in licensed facilities that provide care to children and dependent adults to undergo a criminal background check. However, the Health and Safety Code permitted these persons to work or be present while the criminal background check is being obtained until fingerprinting could be substantially automated, which it is now. The Department is adopting these regulations to require criminal background clearances to prevent persons who pose a risk to children and dependent adults from being present in the facilities while their criminal backgrounds are being checked. The Department must act to prevent the situations in which persons with serious criminal records may be in the presence of, or responsible for the care of, children and dependent adults. These regulations also increase the ability of the Department to immediately remove specified persons from facilities who pose a threat to children and clients in care.
2. These regulations implement and make specific the requirements an individual must meet to request a criminal record exemption and the criteria the Department of Social Service uses to evaluate exemption requests. A recent review of the exemption review process identified specific ways to strengthen the evaluation criteria. The revised criteria enhance protections for community care clients by ensuring that individuals convicted of violent crimes are not caring for these clients.
3. Currently the exemption evaluation criteria are not established by regulation. As a result, the administrative law judges who hear the appeals have no guidance. Placing the exemption review criteria into regulations would further increase the protection of clients because these decisions would be based on regulation.
4. During the time for implementation of the criminal record exemption requirements through the nonemergency rulemaking process set forth in the Administrative Procedure Act, individuals in care would not have the added protections afforded by the revised exemption criteria contained in these regulations.

INFORMATIVE DIGEST

Currently, the Community Care Licensing Division (CCL) of the California Department of Social Services (CDSS) has regulations in place that apply to all community care facilities (Division 6) and to all child care centers (Division 12). The proposed regulations amend the current CCL regulations by amending the applicable existing Definition; Criminal Record Clearance; Criminal Record Exemption; and Personnel Record Sections throughout Division 6, Chapters 1, 8, and 8.5 and Division 12, Chapters 1 and 3. The amendments are consistent with

Health and Safety Code Sections 1522, 1522.1, 1568.09, 1569.17, 1596.871, and 1596.877, which were amended by Senate Bill (SB) 1984, Chapter 1267, Statutes of 1994. SB 1984 requires that the Department place into regulations existing policies and criteria, that have been used and refined for approximately 25 years, to evaluate criminal record exemption requests. Where necessary, regulations throughout all affected sections have been reworded and/or restructured for clarity and consistency.

COST ESTIMATE

1. Costs or Savings to State Agencies: These regulations will result in workload increases that are expected to be offset by workload decreases resulting from the new requirements for clearance prior to work.
2. Costs to Local Agencies or School Districts: These regulations will result in workload increases that are expected to be offset by workload decreases resulting from the new requirements for clearance prior to work.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: No fiscal impact exists because this regulation does not affect any federally funded state agency or program.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies but not on school districts. The mandate is not required to be reimbursed pursuant to Section 17500, et seq. of the Government Code because implementation of the regulations will, if anything, result in negligible costs.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in 1522, 1530, 1530.5, 1568.072, 1569.30, 1596.81, and 1596.871. Subject regulations implement and make specific 1522, 1525.1, 1530, 1531, 1568, 1568.072, 1568.082, 1568.09, 1568.092, 1569.17, 1596.81, 1596.855, 1596.871, 1596.877, 1596.8897, 13143, and 14564, Health and Safety Code; and Section 15376, Government Code.